

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Schools and Libraries Universal Service  
Support Mechanism

A National Broadband Plan For Our Future

CC Docket No. 02-6

GN Docket No. 09-51

**COMMENTS OF BLACKBOARD INC.**

Michael B. Hazzard  
J. Isaac Himowitz  
ARENT FOX LLP  
1050 Connecticut Avenue, NW  
Washington, DC 20036-5369  
(202) 857-6000  
hazzard.michael@arentfox.com  
himowitz.isaac@arentfox.com

*Counsel for Blackboard Inc.*

July 9, 2010

## **SUMMARY**

In passing the universal service provisions of the Telecommunications Act of 1996, Congress sought to ensure that eligible schools and libraries have affordable access to modern telecommunications and information services that will enable them to serve the educational needs of all students throughout the nation. However, the current list of services supported by the E-rate Program has not evolved with technological innovation as envisioned by Congress. Rather, the current E-rate Program myopically focuses on providing basic conduit access to the Internet, and fails to support adequately the services that allow administrators, teachers, and students to fully harness the educational opportunities made available by Internet technology.

American students, like American workers, are increasingly turning to information services to engage in school and library work at all hours and from many different locations. In order to achieve the goals of the E-rate Program, E-rate funds should be made available to schools in a manner that will allow schools to obtain those services that will be most useful in their educational mission and that will provide users with a seamless transition between school, library, and home. A conduit to the Internet at schools and libraries is necessary but not sufficient to achieve this goal. Rather, the E-rate Program should support online applications that allow educators to blur the line between “in-class” and “out-of-class” experiences. The E-rate Program’s limited funding of applications and software denies schools the ability to access the full range of benefits that the Internet has to offer.

For instance, the E-rate Program should be expanded to include broadcast text messaging. Broadcast text messaging capabilities allow teachers and administrators to reach out to parents, teachers, and students quickly and at low prices. In many instances, text messaging may be both the fastest and cheapest way to distribute necessary information. For instance, broadcast text messaging is a useful tool for conveying information to individuals in emergency situations.

These situations can include school security issues, weather-related cancellations, and other safety-related concerns. Text messaging can also be used to alert parents and students about important tests or student absences, reducing truancy and improving attendance.

The Commission should also maintain and expand its support of web hosting services. Much of the Internet's educational value lies in its ability to allow students to access and share information posted online, both by teachers and by fellow classmates. The proposal currently under consideration by the Commission to eliminate support for web hosting would undermine this capability and apply a backward-looking, anachronistic definition of telecommunications and information services to the services supported by the E-rate Program. Simple Internet connections do not, by themselves, promote the goals of the E-rate Program; schools must have strong applications to take advantage of the Internet connections available. The E-rate Program should support the acquisition and maintenance of such applications.

The Commission should also take action to fix several structural flaws in the E-rate Program. First, the size of the E-rate Program should be increased and then pegged to inflation. The current E-rate Program has not increased in size since 1996. As a result, 14 years after the creation of the program, the capped funds are insufficient to meet the needs of the school and libraries the E-rate Program is supposed to support. Second, the Commission should reduce requirements relating to the development of technology plans, which are often duplicative of other federal and state requirements. Third, the Commission should carefully consider modifying its rules to maximize the flexibility of schools seeking to obtain E-Rate funds in accordance with state procurement procedures. Such steps are necessary to eliminate key administrative obstacles for schools wishing to make use of the E-rate Program.

## Table of Contents

|  |    |
|--|----|
| I. INTRODUCTION .....  | 2  |
| A. About Blackboard.....   | 2  |
| B. Blackboard's Interest in the E-rate Program .....   | 4  |
| II. THE E-RATE PROGRAM SHOULD SUPPORT SERVICES RATHER THAN TECHNOLOGIES.....   | 6  |
| A. The E-rate Program's mandate includes telecommunications, information, and advanced services that cover a wide range of products .....                  | 6  |
| B. The E-rate Program should include applications and services that enable schools to take advantage of the broadband connections that are available ..... | 9  |
| III. THE COMMISSION SHOULD RECONSIDER WHETHER TO FUND SPECIFIC SERVICES .....  | 14 |
| A. Broadcast text messaging should be a supported service, regardless of the technology platform used .....  | 14 |
| B. Web hosting services should remain supported .....  | 16 |
| IV. ACCESS TO THE E-RATE PROGRAM SHOULD BE EXPANDED .....  | 18 |
| A. The size of the E-rate Program should be increased and pegged to inflation .....  | 18 |
| B. The E-rate Application process should be streamlined .....  | 19 |
| V. CONCLUSION .....  | 21 |

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Schools and Libraries Universal Service  
Support Mechanism

A National Broadband Plan For Our Future

CC Docket No. 02-6

GN Docket No. 09-51

**COMMENTS OF BLACKBOARD INC.**

Blackboard Inc. (“Blackboard”), by its attorneys, hereby submits these comments to the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceedings to address key issues regarding the Schools and Libraries Program and National Broadband Plan raised in the *E-rate Broadband NPRM*, the *ESL Order and FNPRM*, and the draft Eligible Services List (“ESL”) proposed by the Universal Service Administrative Company for E-rate funding year 2011.<sup>1</sup> Blackboard urges the FCC to take advantage of the confluence of these proceedings to ensure that the E-rate Program’s goals, objectives, and regulations promote the availability of online learning opportunities for America’s students.

---

<sup>1</sup> *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan For Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, NPRM, FCC 10-83 (rel. May 20, 2010) (“*E-rate Broadband NPRM*”); *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Order and FNPRM, FCC0 9-105 (rel. Dec. 2, 2009) (“*ESL Order and FNPRM*”); *Wireline Competition Bureau Announces Comment Deadlines on E-rate Broadband Notice of Proposed Rulemaking, Eligible Services List Further Notice of Proposed Rulemaking, and on E-rate Draft Eligible Services List for Funding Year 2011*, CC Docket No. 02-6, GN Docket No. 09-51, Public Notice, DA 10-1045 (rel. June 9, 2010) (“*Draft ESL PN*”).

## **I. INTRODUCTION**

### **A. About Blackboard**

Blackboard is a leading provider of enterprise software applications and related services to the education industry. Blackboard's clients include colleges, universities, and K-12 schools which use Blackboard's technology to enhance the educational experience and campus life. Blackboard is a publicly-traded company, founded in 1997 and headquartered in Washington, D.C. Blackboard employs approximately 1,250 individuals, almost entirely within the United States, and Blackboard's service offerings are used by more than 7,700 educational institutions worldwide. With its financial resources, track record of success and commitment to the educational industry, Blackboard is exactly the type of company with which schools receiving E-rate funding should look to partner.

Blackboard offers a comprehensive range of services designed to support the goals of its educational clients. These services, which can be combined in a variety of packages, fall generally into four principal platforms: (1) Blackboard Learn; (2) Blackboard Connect; (3) Blackboard Mobile; and (4) Blackboard Transact.

Blackboard Learn and Blackboard Connect provide services most directly relevant to the immediate goals of the Universal Service Fund's E-rate Program and the National Broadband Plan. Blackboard Learn provides a scalable and easy-to-use technology platform for delivering education online, maintaining digital content, and aggregating access to tools and information. This offering allows teachers to assign digital materials to their class, grade assignments, and track student progress – all online via hosted-websites. Blackboard's services also allow students to collaborate with each other online to conduct research and work together to complete projects. Blackboard Learn accomplishes this by providing a customizable Web portal that provides access to multiple content sources, campus services, administrative systems and

personal information management tools, including e-mail and calendar services. It also allows schools to define dedicated online environments for specific classes, departments, clubs and other groups to communicate, share, and edit documents. Teachers also can use the application to plan and document student goals and performances, and evaluate progress against shared rubrics.

Blackboard Connect provides access to a communication system that enables rapid dissemination of critical information via voice and text services. The Blackboard Connect family includes offerings specifically designed for education, municipal, government, and military clients. Blackboard Connect is a fully hosted, web-based application that enables clients to record, schedule, send, and track personalized voice messages, e-mail, SMS, or text messages to tens of thousands of recipients in minutes. Blackboard Connect also includes a bundled set of mass notification, survey, and community outreach tools through a service that eliminates the need for clients to purchase or deploy equipment, hardware or software, or to incur long distance phone charges. Currently, 83% of all public K-12 students in the United States receive communications through a Blackboard Connect product.

Blackboard Mobile, Blackboard's newest product, allows educational institutions to access a mobile-based set of applications that provide student services and campus information through mobile devices. This allows students and teachers to access the same resources from their mobile device as they can from their personal computer.

Blackboard also offers commerce-related services less directly tied to the mission of the E-rate Program. For instance, Blackboard Transact can be used for on- and off-campus commerce management, and allows schools to create integrated student debit account programs for charging incidental expenses such as meals and academic materials, typically using a campus

identification card. It also supports facilities access and identity verification operations, making for a more secure campus for all students.

Blackboard continues to work with its clients to update its current offerings and develop new educational applications.

## **B. Blackboard's Interest in the E-rate Program**

Blackboard's wide array of services and commitment to its educational clients has won it a large and growing following in the K-12 educational community. In some cases, Blackboard's customers have reached out to Blackboard to provide services currently supported by the E-rate Program. For instance, in 2009, Blackboard provided approximately \$325,000 worth of E-rate supported services to K-12 schools in 3 states – Virginia, California, and Minnesota. In 2010, potential E-rate recipients have requested almost \$540,000 worth of Blackboard-provided services across five states.

Blackboard's services are useful to a wide variety of primary and secondary educational institutions, including both public and private schools. Currently, K-12 clients that use Blackboard's Managed Hosting offering to operate their school or district website are eligible for E-rate support at a discount rate of up to 71%. However, there are many other ways K-12 clients are using Blackboard. For instance, many teachers use Blackboard's services to post homework, give quizzes, refer students to related websites, incorporate third-party subscription content such as Discovery or NBC, and save smart-board lessons.

Blackboard is also providing online services to help school systems save money. For example, Fairfax County Public Schools ("FCPS") in Virginia, a Blackboard client, began offering on-line summer school courses in 2009, reducing the number of buses used and schools opened during the summer significantly. Other schools, such as Riverside Unified School District in California, Rochester Public Schools in Minnesota, and Cobb County Schools in



Georgia have established “virtual classrooms” that enable school districts to offer specialized classes for which there is insufficient demand at a specific school. No longer do you have to have an Italian teacher in every high school. No longer do districts have to offer all AP courses in all high schools across a county. Rather, virtual classrooms enable schools to pool demand across broad geographic areas to provide students with specialized learning, which is particularly helpful in rural areas.

The use of Blackboard and other technology products has expanded the services that school districts are able to offer to traditionally disadvantaged communities. Fairfax County Public Schools, although overall one of the wealthiest school districts in the country, has a wide range of low-income students, immigrant students, and other disadvantaged youths that it must serve along with some of the wealthiest neighborhoods in the state. Using Blackboard along with other software products, FCPS was able to introduce their eCART (Electronic Curriculum Assessment Resource Tool) initiative. Through the eCART program, FCPS is able to offer more individualized learning programs for at-risk students.<sup>2</sup> Similarly, Littleton Public Schools in Colorado began a program for underachieving students where these students can take make-up courses at their own pace and at a time that worked for them. This program avoided holding students back a grade while decreasing drop-out rates among these students.

Blackboard’s products are also popular tools for professional development for teachers and administrators. As just one of many possible examples, the Clear Creek Independent School District in Texas uses Blackboard for professional development and classroom instruction. Teachers have 24/7 access to their own learning curriculum through the online Professional Development Program and year-round access to tools and resources as well as access to each

---

<sup>2</sup> Additional information on the eCART program is available at <http://www.fcps.edu/DIS/FCPSeCART/> (last visited July 7, 2010).

other through discussion boards. Parental access to classrooms and student grade books along with up-to-date school websites is building stronger ties between home and school. Online curriculum content makes it easier for administrators to help teachers enhance and enrich instruction online and in the classroom. By giving teachers more control over their own professional development and giving them 24/7 access to resources and materials, Clear Creek has been able to help teachers develop and refine new pedagogical techniques and practices.

Blackboard regularly receives inquiries regarding possible E-rate-funded projects from schools throughout the United States, and frequently is used to provide government supported services. As such, Blackboard frequently bids in and wins auctions to provide Web-hosting services. Blackboard also has experience providing service under Title I grants (*i.e.*, No Child Left Behind) and under Title IIa grants (*i.e.*, professional development).

Blackboard's goal in participating in this proceeding is to ensure that educational institutions have both the flexibility and funding sufficient to take advantage of the types of services Blackboard offers.

## **II. THE E-RATE PROGRAM SHOULD SUPPORT SERVICES RATHER THAN TECHNOLOGIES**

### **A. The E-rate Program's mandate includes telecommunications, information, and advanced services that cover a wide range of products**

With the passage of the Telecommunications Act of 1996, Congress made schools and libraries eligible for the first time to become the explicit beneficiaries of universal service support.<sup>3</sup> In implementing this provision, the Commission noted in its *First Report & Order* on universal service that "the legislative history indicated that Congress intended to ensure that

---

<sup>3</sup> 47 U.S.C. § 254; Joint Explanatory Statement of the Committee of the Conference, H.R. 458, 104th Cong. ("Joint Explanatory Statement"); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, First Report & Order, 12 FCC Rcd. 8776, ¶ 424 (1997) ("*First Report & Order*").

eligible schools and libraries have affordable access to modern telecommunications and information services that will enable them to provide educational services to all parts of the nation.”<sup>4</sup> The E-rate Program is the logical outgrowth of this congressional mandate, and its success or failure should be measured based on how well it achieves Congress’ objectives.

In the Telecommunications Act, Congress defined supported services for schools and libraries in terms of “telecommunications services,” “special” or “additional services,” and “advanced telecommunications and information services.”<sup>5</sup> This language has proven prescient in the years since the adoption of the Telecommunications Act, as online services and distance learning options have grown and expanded beyond what was conceivable in 1996. Fortunately, Congress’ broad language is a clear indicator that Congress intended to support services beyond those available in 1996, as evidenced by Congress’ explicit acknowledgment that “[u]niversal service [is] an evolving level of telecommunications services that the Commission shall establish ... taking into account advances in telecommunications and information technologies and services.”<sup>6</sup>

The list of supported services adopted by the FCC to implement the E-rate Program has not evolved to advance Congress’ wide view of the services that should be supported as technology has evolved. Rather, the FCC has adhered to the Joint Board on Universal Service’s original recommendation from 1996 not to “support the full panoply of information services.”<sup>7</sup> In making its recommendation, the Joint Board found that:

---

<sup>4</sup> *First Report & Order* ¶ 424 (footnotes omitted).

<sup>5</sup> *See* 47 U.S.C. §§ 254(c)(1), (c)(3), and (h)(2)(A).

<sup>6</sup> *First Report & Order* ¶ 58 (citing 47 U.S.C. § 254(c)(1) (alterations in original)).

<sup>7</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd. 87, ¶¶ 464-65 (1996).

The legislative history articulates the congressional intent to enable schools and libraries to: browse library collections, review the collections of museums, or find new information on the treatment of illness, to Americans everywhere via schools and libraries. This universal access will assure that no one is barred from benefiting from the power of the Information Age.

By providing for discounts on all telecommunications services, as well as discounted Internet access, we find that schools and libraries will have access to the wealth of information available on the Internet, and, therefore, will have access to advanced telecommunications and information services, in compliance with section 254(h)(2)(A).<sup>8</sup>

As a result of this finding, the FCC has expressly deemed ineligible for E-rate funding “services that go beyond basic conduit access to the Internet.”<sup>9</sup>

Although this position may have been reasonable given the state of the Internet in 1996, more than a decade later it has become clear that while the online information made available by institutions such as libraries and museums is valuable, to fully harness the educational opportunities provided by the rise of the Internet, schools and libraries must have access to advanced telecommunications and information services beyond “basic conduit access.” Indeed, as the Government Accountability Office (“GAO”) noted in its March 2009 Report, “in an increasingly broadband oriented world,” it may not be in the national interest “that a substantial and growing portion of commitments is for [traditional] telecommunications services such as local and cellular telephone service.”<sup>10</sup> The report further noted that even a focus on providing

---

<sup>8</sup> *Id.* ¶ 465 (footnotes omitted).

<sup>9</sup> *Pleading Cycle Established for Eligible Services List for Universal Service Mechanism for Schools and Libraries*, CC Docket No. 02-06, Public Notice, FCC 06-109, at 12 (rel. July 21, 2006).

<sup>10</sup> U.S. Government Accountability Office, *Telecommunications: Long-Term Strategic Vision Would Help Ensure Targeting of E-rate Funds to Highest-Priority Uses*, at 49 (Mar. 2009) (“GAO Report”) available at <http://www.gao.gov/new.items/d09253.pdf>.

simple Internet conduits may fail to achieve the objectives of the program.<sup>11</sup> Fortunately, in authorizing expenditures for “additional” or “advanced” services, Congress provided the FCC with authority to support the most modern services available.

**B. The E-rate Program should include applications and services that enable schools to take advantage of the broadband connections that are available**

In order to achieve the goals of the Schools and Libraries Program, schools must be free to purchase the types of services that will be most useful on their campuses and in their classrooms. The traditional E-rate Program retains a wireline-centric focus that is increasingly divorced from the way Americans study, work, and live. By insisting that the vast majority of services supported by the E-rate Program be of a type necessarily consumed in school buildings (*i.e.*, funding mainly Internet connections rather than services and applications), the program is reducing access to one of the great advantages of the information age – the ability to access material from any location and work from anywhere.

Furthermore, the connectivity goals of the E-rate Program are increasingly being met and the E-rate Program’s efforts may be better expended elsewhere. One recent study suggests that “Ninety-nine percent of the poorest schools (those with 75 percent or more of their students eligible for free or reduced-price lunches) have Internet access, and 100 percent of other schools have Internet connections.”<sup>12</sup> Furthermore, a 2005 analysis found that 94% of public school instructional rooms had Internet access, and of the class rooms with Internet access, 97% were

---

<sup>11</sup> *Id.* at 18.

<sup>12</sup> Karen Mossberger et al., *How Concentrated Poverty Matters for the “Digital Divide”*: *Community-Level Barriers to Information Technology Access and Use* (Apr. 20, 2006), available at [http://www.allacademic.com//meta/p\\_mla\\_apa\\_research\\_citation/1/3/6/9/1/pages136918/p136918-1.php](http://www.allacademic.com//meta/p_mla_apa_research_citation/1/3/6/9/1/pages136918/p136918-1.php)

using broadband connections.<sup>13</sup> This has led the GAO to comment that “given the increase in schools’ and libraries’ level of Internet connectivity, it is no longer clear that the program [as functioning] serves an existing need.”<sup>14</sup>

While providing the conduit for telecommunications and Internet services to schools is undoubtedly important, simply providing these basic services at schools and libraries will not allow students to take full advantage of available modern technology. As Julie Evans, CEO of Project Tomorrow, a non-profit national education group, explained, “Students clearly want online learning to be a bigger part of their overall school experience ... [but] schools have not fully capitalized on this interest to create more relevant, engaging, and productive learning experiences for students.”<sup>15</sup> Indeed, the National Broadband Plan picked up on this problem, noting that “[t]here is a limited pool of high-quality digital content that is easily found, bought, accessed and combined with other content to allow teachers to customize classroom materials to their students’ needs.”<sup>16</sup> Blackboard’s services directly address this deficiency.

Providing funding only for services directly related to transmission of data, voice, and video, without supporting the applications that run over the network, is equivalent to building a six-lane highway to nowhere – it may be well constructed, but fundamentally it is not very

---

<sup>13</sup> U.S. Dept. of Education Institute of Education Sciences, Fast Facts, *How many schools have access to the Internet?* available at <http://nces.ed.gov/fastfacts/display.asp?id=46> (last visited July 7, 2010).

<sup>14</sup> GAO Report at 18.

<sup>15</sup> David Nagel, *Report: Online Learning Nearly Doubles Among High School Students*, thejournal.com (June 29, 2010) available at <http://thejournal.com/articles/2010/06/29/report-online-learning-nearly-doubles-among-high-school-students.aspx> (noting that 27% of all high school students and 21% of all middle school students reported taking online classes last year). Blackboard’s products are also a popular as a tool for professional development for teachers and administrators.

<sup>16</sup> *National Broadband Plan* at 228, available at <http://download.broadband.gov/plan/national-broadband-plan.pdf> (last visited July 7, 2010).

useful. As a general matter, many educational and poverty experts view advances in Internet access as an important starting point but stress that “the wiring of schools and libraries is insufficient to address the need for technology in education.”<sup>17</sup> In order to make a fundamental difference in the way students learn, students must have access to meaningful resources at the other end of the information services connection.

In considering how to best meet the mandate of the Telecommunications Act of 1996 and the goals included in the National Broadband Plan, the Commission should focus on supporting the end-user and end-product educational experience, and not just on the individual components that make it up. American students, like American workers, are increasingly turning to information services to engage in school and library work at all hours and from many different locations. The goal of the E-rate Program should be to ensure a seamless transition between school, library, and home, where each institution can support the other electronically. This means supporting online applications (like those offered by Blackboard) that allow educators to blur the line between “in-class” and “out-of-class” experiences.

In addition to improving the overall educational experience, this sort of technological capability can help maintain the educational experience when school is not in session. For instance, during the winter of 2009-2010, much of the mid-Atlantic was paralyzed with a series of snowstorms that shut down schools for more than a week. For many students, this was lost time during which education dragged to a halt. With the appropriate software and applications, however, classes could have continued to make progress, with study materials distributed, assignments issued and collected, regular postings to discussion groups, and, if teachers and

---

<sup>17</sup> Janet Thompson Jackson, *Capitalizing On Digital Entrepreneurship For Low-income Residents And Communities*, 112 W. Va. L. Rev. 187, 195 (2009).

schools were so inclined, video lectures.<sup>18</sup> For instance, in the wake of the H1N1 flu scare, Fairfax County Public Schools developed a contingency plan for continuing educational activities in the event that schools had to be closed.<sup>19</sup> The plan resulted in the creation of the “Keep on Learning” website through Blackboard’s services, which provided roughly four-days worth of curriculum to be used in the event of a health and safety emergency. These sorts of services are the promise and potential of information services in the educational space. The technology exists now, and is often used in university settings. The challenge is to make it available to K-12 teachers today.

To do this, the Commission must expand the scope of the E-rate Program. Under the Telecommunications Act, in order for a school or library to use E-rate funding to purchase telecommunications or information services, the use of these services must be for “educational purposes.”<sup>20</sup> In the *Schools and Libraries Second Report and Order*, the Commission determined that “educational purposes” are those activities that are “integral, immediate, and proximate” to the education of students.<sup>21</sup> In practice, this has resulted in a very limited range of services receiving support from the E-rate Program. Most often, these services are limited to those that are used on library or school property such as school telecommunications systems and

---

<sup>18</sup> For instance, during Hurricane Katrina, Blackboard partnered with Tulane University to offer online courses while Tulane’s facilities were being rebuilt. See Blackboard & Tulane University, *Creating a Virtual Campus*, available at <http://www.blackboard.com/CMSPages/GetFile.aspx?guid=39a0b112-221d-4d04-be80-f2024d16943a> (last visited July 7, 2010).

<sup>19</sup> See Vanessa Hua, *Scare Tactics*, thejournal.com (Feb. 2010) available at <http://www.parsintl.com/20253.pdf> (last visited Jul. 9, 2010).

<sup>20</sup> 47 U.S.C. § 254(h)(1)(B).

<sup>21</sup> *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, ¶ 17 (2003) (“*Schools and Libraries Second Report and Order*”); 47 C.F.R. § 54.500(b).



Internet access, although in a few instances the use of telecommunications services offsite also meets the statutory definition.<sup>22</sup>

Although the “integral, immediate, and proximate” standard is a reasonable standard for evaluating whether or not to support services, the E-rate Program’s application of this standard has been somewhat self-defeating. One of the great advantages provided by the rise of modern information services has been the ability of individuals to remain in touch, regardless of whether they access the Internet from home, school, or work. By limiting E-rate support to locations and times that require students to be at school, the program is already limiting its own effectiveness to times when students are already most engaged in the education process (*i.e.*, when they are at school). In contrast, a well structured E-rate Program should encourage connectivity with the education institution regardless of where the student is located. While the E-rate Program should continue funding services that are “integral, immediate, and proximate” to the education of students, it should apply those terms to the educational mission as a whole and not simply services used at specific locations. This means supporting applications that actually add to the educational experience, and not just the conduits that provide access to the network.

The E-rate Program can accomplish this goal by reconsidering which services it supports and how it provides that support. Although connecting schools to telecommunications and information services networks is valuable, teachers and administrators must have access to meaningful applications that improve the educational experience in order to maximize the value of the program. Ultimately, it should be the functionality of the service (*i.e.*, how the service promotes the educational goals of the school or library), and not the underlying technology, that

---

<sup>22</sup> *E-rate Broadband NPRM* ¶ 42.

receives E-rate support. The E-rate Program's narrow scope denies schools the ability to access the full benefit of broadband services.

In making this transformation, the E-rate Program should focus on increasing educational opportunity and access, rather than the type of technology underlying a given service. The Universal Service Fund is required to develop competitively and technologically neutral programs, so as to ensure that the consumer demand (and not government mandated-policy) drives adoption of technologies.<sup>23</sup> In the E-rate context, this means that schools and libraries should be permitted to select from a wide range of vendors for any services they wish to obtain as long as such service are "integral, immediate, and proximate" to the educational process, regardless of whether these services are provided by a traditional telecommunications provider, an information service provider, or a third-party service provider.

### **III. THE COMMISSION SHOULD RECONSIDER WHETHER TO FUND SPECIFIC SERVICES**

#### **A. Broadcast text messaging should be a supported service, regardless of the technology platform used**

In its December 2009 *ESL Order & FNRPM* the FCC proposed to modify its rules to include text messaging (also referred to as "short message service" or "SMS") among the E-rate supported services.<sup>24</sup> In doing so, the Commission noted that text messaging was similar to other E-rate-eligible services used by applicants to communicate, such as e-mail and paging services.<sup>25</sup> However, even as the Commission approved text messaging as a supported service,

---

<sup>23</sup> See 47 U.S.C. § 254(h)(2); see also *USF First Report & Order*, 12 FCC Rcd at 8801-20, ¶¶ 47-49 (adopting the principle of "competitive neutrality" to mean that "universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.").

<sup>24</sup> *ESL Order & FNRPM* ¶¶ 17-18.

<sup>25</sup> *Id.* ¶ 17 (footnotes omitted).

the Commission simultaneously “caution[ed] applicants ... that for purposes of the E-rate Program, eligible text messaging would not include applications, software, or other special features that, for example, are used to facilitate the mass distribution of text messages.”<sup>26</sup>

The Commission’s decision to exclude the mass distribution of text messages from the list of supported services should be reversed as these services can provide important benefits to faculty and students. Broadcast text messaging capabilities allow teachers and administrators to reach out to large numbers of individuals quickly and at a relatively low price. In many instances, text messaging may be both the fastest and cheapest way to distribute necessary information that is “integral, immediate, and proximate” to the education of students.

Broadcast text messaging is especially useful for conveying information to individuals in emergency situations. For instance, in the wake of the Virginia Tech shootings, many administrators at college campus have become interested in using broadcast text messages to alert the campus in case of emergency.<sup>27</sup> In the K-12 context, emergency texts would not only be useful for reaching students, but also for providing parents and teachers with urgent information, whether relating to school security issues, weather-related cancellations, or other issues of concern. Most broadcast text services allow messages to be delivered to specific groups (such as staff, parents, class, or students), making it relatively simple to send a targeted broadcast message that will be received almost immediately, thereby ensuring the timeliness of the information. Given the importance of maintaining student safety at school and school-related

---

<sup>26</sup> *Id.* ¶ 18 (footnotes omitted).

<sup>27</sup> Carolyn Y. Johnson, *Colleges seek text-message alert after attack*, Boston Globe (Apr. 24, 2007) available at [http://www.boston.com/business/personaltech/articles/2007/04/24/colleges\\_seek\\_text\\_message\\_alert\\_system\\_after\\_attack/](http://www.boston.com/business/personaltech/articles/2007/04/24/colleges_seek_text_message_alert_system_after_attack/).

functions, there is no reason such services should not be considered “integral, immediate, and proximate” to the education of students and therefore eligible for funding.

Broadcast text messaging also can be used to improve a school’s educational mission directly. For instance, text messaging can be used to alert students’ parents about a student’s absence from school. This type of program can result in a significant decrease in truancy, and has shown positive results in independent studies. For example, in Hampshire, England, a government-funded study found a noticeable reduction both in the number of persistently absent students and total absences when a parental-notification program via text message was established at a secondary school.<sup>28</sup> Some school districts are also using broadcast text messages to encourage attendance by contacting students directly for reminders relating to state-wide testing and other school-wide events.<sup>29</sup> These uses of broadcast text messaging are also “integral, immediate, and proximate” to the educational experience, and there is no reason to deny funding for this service.

#### **B. Web hosting services should remain supported**

Web hosting has been on the list of services eligible for E-rate funding since 2004. In the past, web hosting has been defined as “services...that provide a means for a school or library to

---

<sup>28</sup> The study, conducted by BECTA, a British agency dedicated to promoting the use of technology in learning, found that in 2005-2006 15.63% of enrolled students were persistent absentees and that 11.35% of students were absent on any given day. When the parental notification program began via text message the following year, persistent absentees had fallen to 10.96% and overall absences reduced to 8.8%. *Using Text Messaging To Support An Attendance Strategy*, BECTA, available at [http://schools.becta.org.uk/index.php?section=oe&catcode=ss\\_es\\_fam\\_att\\_03&rid=14769](http://schools.becta.org.uk/index.php?section=oe&catcode=ss_es_fam_att_03&rid=14769) (last visited July 7, 2010).

<sup>29</sup> See, e.g., Huntington Beach Union High School District, *Protocol and Script Guide for the Connect-ED Notification System* available at <http://www.hbuhdsd.k12.ca.us/ConnED/Connect-ED%20Protocols.pdf> (last visited July 7, 2010).

display content on the Internet.”<sup>30</sup> Although intended to cover the costs associated with hosting a public webpage, in December 2009 the Commission clarified that schools could use E-rate funding to host web pages protected by a username and password. However, the Commission explicitly excluded from funding “any type of interactive application feature that would allow for blogging, and any features involving data input or retrieval including searching of databases for grades, student attendance files, or other reports.”<sup>31</sup> More recently, the Commission has sought comment on proposals by Universal Service Administrative Company to designate web hosting, web server, and domain-name registration as services ineligible for E-rate funding.<sup>32</sup>

By backing away from supporting web hosting services, the E-rate Program is moving in exactly the wrong direction. As a general matter, much of the Internet’s power lies in its ability to allow people to access and share information posted online. In the school context, this takes the form of allowing teachers to post assignments, reading materials, and school projects online, and allowing students to respond to these postings both individually and in collaborative groups.

In eliminating support for web hosting, the E-rate Program is effectively applying a backward-looking, anachronistic definition of telecommunications and information services that myopically focuses on the conduit for information rather than on the content. However, as discussed above, simple Internet connections do not, by themselves, promote the goals of the E-rate Program; schools must have strong applications and software to take advantage of the Internet connections available for the E-rate Program to achieve its objectives. Web hosting is the fundamental basis of these applications and should remain supported.

---

<sup>30</sup> *Release of Funding Year 2005 Eligible Services List for Schools and Libraries Universal Service Mechanism*, CC Docket No. 02-6, Public Notice, 19 FCC Rcd 20221, 20222 (2004).

<sup>31</sup> *ESL Order and FNPRM* ¶ 22.

<sup>32</sup> *Draft ESL PN* at 9.

Companies like Blackboard offer a variety of hosting services that can be used to dramatically enhance the educational experience, both in and out of the classroom. Indeed, Blackboard's customers frequently express their belief that *all* Blackboard Learn services should be covered under E-rate because these services allow for the posting of content and make distance learning programs easier to administer. Withdrawing support for these services would limit the ability of teachers and students to take advantage of these services, and would be contrary to the overall goal of the E-rate Program.

#### **IV. ACCESS TO THE E-RATE PROGRAM SHOULD BE EXPANDED**

##### **A. The size of the E-rate Program should be increased and pegged to inflation**

Since its inception in 1996, the E-rate Program has increased access to the Internet and other key telecommunications and information services across the nation. Nearly every school now has at least some access to the Internet, and the E-rate Program is largely responsible for that success. However, when the law was enacted in 1996, the annual cap placed on the fund was \$2.25 billion, and the Commission failed to include provisions that would index the amount to inflation or provide for additional funding. The result is that 14 years later, the capped amount is insufficient to meet the needs of the program.

One result of this short fall has been a limited amount of funding for Priority 2 services, which fund internal connections within the school and library buildings. As the GAO pointed out in 2009, applications for funding have exceeded the amount available from each year from 1998 through 2007.<sup>33</sup> Although requests for Priority 1 services – that is, telecommunications and Internet access – have remained roughly level since 2002, commitments have increased, at least in part, because applicants received a greater proportion of the funds they requested. The

---

<sup>33</sup> GAO Report at 18.

increased amount committed for Priority 1 services has had the effect of decreasing the amounts available for Priority 2 services, which are funded only after all eligible Priority 1 service requests are satisfied. In order to address this issue, more funding is needed.

Blackboard recommends the Commission take two steps to address this problem. First, the Commission should raise the annual cap, either based upon the rate of inflation between 1996 and today, or by raising the fund to levels that more closely reflect the level of demand for E-rate funding. As a benchmark, in 2007 schools and libraries requested approximately \$4 billion from the E-rate Program – almost double what was available.<sup>34</sup> Second, the Commission should adopt proposals to peg the funding cap to inflation levels.<sup>35</sup> Increasing this cap and pegging it to inflation will allow schools and libraries to continue to benefit from upgraded connections and advanced services.

#### **B. The E-rate Application process should be streamlined**

Blackboard urges the Commission to take steps to simplify the E-rate application process. The current process consists of five major steps, with most steps consisting of several time-consuming elements. For some schools seeking E-rate support, the administrative hassles of the E-rate Program threaten to overcome the program's possible benefits. To combat this problem, Blackboard encourages the Commission to refine the application process so as to reduce the administrative burden both on schools and on the E-rate Program administrators.

Specifically, Blackboard supports proposals to reduce requirements relating to technology plans. As the Commission itself noted, the provision of Priority 1 services is often straightforward and a technology plan is at best a *pro forma* exercise, and at worst represents an

---

<sup>34</sup> *Id.* at 14.

<sup>35</sup> *E-rate Broadband NPRM* ¶¶ 84-85

unnecessary and burdensome obligation.<sup>36</sup> Therefore, these plans should not be required for Priority 1 services. The Commission should also consider how it can avoid requiring applicants to undertake duplicative work in creating technology plans by adopting rules that would allow for the acceptance of technology plans based on state or local requirements, rather than on specific E-rate requirements.

The Commission's proposal in the *E-rate Broadband NPRM* to eliminate the requirement that applicants for Priority 1 services file an FCC Form 470 and wait twenty-eight days before entering into a contract with a service provider when schools already operate under similar restrictions pursuant to state or local laws also warrants careful consideration.<sup>37</sup> Compliance with these provisions can be difficult, particularly for schools that have not previously participated in the application process. Furthermore, such requirements may be unnecessary when these schools must still comply with local and state procurement requirements that mirror the purpose of the federal regulations, albeit with slightly different terminology and specific procedures.

---

<sup>36</sup> *Id.* ¶ 18.

<sup>37</sup> *Id.* ¶¶ 21-22.



## V. CONCLUSION

Consistent with the above recommendation, Blackboard Inc. urges the Commission to adopt proposals that ensure that the E-rate Program funds telecommunications, information, and advanced services in a meaningful and competitively neutral way. The Commission should avoid the temptation to focus solely on supporting conduit-centric services, and instead embrace an approach designed to improve the educational experience for all students, regardless of where and how they access supported services.

Respectfully submitted,

/s/ Michael B. Hazzard

Michael B. Hazzard

J. Isaac Himowitz

ARENT FOX LLP

1050 Connecticut Avenue, NW

Washington, DC 20036-5369

(202) 857-6000

[hazzard.michael@arentfox.com](mailto:hazzard.michael@arentfox.com)

[himowitz.isaac@arentfox.com](mailto:himowitz.isaac@arentfox.com)

Date: July 9, 2010